



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

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**COMMONWEALTH OF VIRGINIA
WASTE MANAGEMENT BOARD
CONSENT ORDER
ISSUED TO
THE CITY OF MARTINSVILLE
FOR THE
CITY OF MARTINSVILLE LANDFILL**

Section A: Purpose

This is a consent order issued under the authority of §10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to the City of Martinsville to resolve certain alleged violations of environmental laws and/or regulations at the City of Martinsville landfill operating pursuant to Solid Waste Facility Permit Number 49.

Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "The City" means the City of Martinsville.
6. "Order" means this document, also known as a consent order.
7. "Regulations" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10

et seq. (“SWMR”).

8. “The Facility” means the City of Martinsville landfill, which operates under Solid Waste Facility Permit Number 49.
9. “The Permit” means Solid Waste Facility Permit Number 49 for the City of Martinsville Sanitary Landfill.

Section C: Findings of Fact and Conclusions of Law

Requirements of the Permit and the Regulations

1. The general intermediate cover requirement for landfills is stated at 9 VAC 20-80-250.C.2.d as follows:

Intermediate cover of at least six inches of additional compacted soil shall be applied whenever an additional lift of refuse is not to be applied within 30 days. Further, all areas with intermediate cover exposed shall be inspected as needed, but not less than weekly. Additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

2. The daily cover requirement for operation of landfills is stated in part at 9 VAC 20-80-250.C.2.c as follows:

Daily cover consisting of six inches of compacted soil or other approved material shall be placed upon all exposed solid waste prior to the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

3. The requirements for the design/construction of landfills are stated at 9 VAC 20-80-250.B.6 as follows:

Run-off from the active portion of the landfill unit shall be handled in a manner that will not cause the discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but-not limited to, the Virginia Pollutant Discharge Elimination system (VPDES) requirements; all facilities shall be designed to provide and maintain drainage structures to prevent ponding and erosion, and to minimize infiltration of water into solid waste cells.

4. Run-on/run-off control systems required at 9 VAC 20-80-250.B.6 must be maintained in accordance with 9 VAC 20-80-250.C.11.
5. The general financial responsibility requirement for solid waste facilities is stated at 9 VAC 20-70-81.A as follows

In order to assure that the costs associated with protecting the public health and safety from the consequences of an abandonment or a failure to properly execute closure, post-closure care or corrective action at a facility are to be recovered from the owner or operator, the owner or operator of such facility shall obtain one, or a combination of the financial responsibility mechanisms described in this part. Financial responsibility mechanisms shall be in the amount equal to the cost estimate approved by the department using the procedures set forth in Article 3 (9 VAC 20-70-111 *et seq.*) of this part.

6. The requirement for financial assurance for corrective action is stated at 9 VAC 20-70-113 as follows

Within 120 days of a facility's finding or the director's determining (whichever first occurs) that Groundwater Protection Standards established as required by 9 VAC 20-80-250.D.6, or Appendix 5.6 D of 9 VAC 20-80-10 *et seq.* as applicable have been statistically exceeded, an owner or operator or a landfill or other unit subject to groundwater monitoring shall provide additional financial assurance in the amount of \$1 million to the department using the mechanisms listed under Article 4 (9 VAC 20-70-140 *et seq.*) of this part.

Inspections

7. DEQ staff inspected the Facility on December 31, 2002. The Compliance Inspection Report ("CIR") for that inspection listed compaction and cover (9 VAC 20-80-250.C.2) as an area of concern.
8. DEQ staff inspected the Facility on January 21, 2003. Inspection results documented the following alleged violations of the Permit and/or Regulations: a) inadequate maintenance of run-on and run-off control, which resulted in erosion of intermediate cover at the Facility; b) excessive blowing litter; c) pollutant discharge to state waters, including blowing litter entering surface waters; d) failure of the eastern slope cover. DEQ issued a Notice of Violation ("NOV") for those violations on February 18, 2003.
9. DEQ staff inspected the Facility on April 15, 2003. The alleged violations cited in the February 18, 2003 NOV had not been corrected as of the April inspection. DEQ alleged the following violations in the CIR for the April 15 inspection: failure to have adequate

financial responsibility in accordance with 9 VAC 20-70-10 *et seq.*, failure to comply with the compaction and cover requirements at 9 VAC 20-80-250.C.2, and failure to provide proper stormwater control system maintenance in accordance with 9 VAC 20-80-250.C.11.

10. DEQ staff inspected the Facility on July 15, 2003. The CIR for that inspection cited the City for compaction and cover violations under 9 VAC 20-80-250.C.2. The CIR listed housekeeping (9 VAC 20-80-250.C.13) and post closure (9 VAC 20-80-250.F) as areas of concern.
11. DEQ staff inspected the Facility on December 3, 2003. The CIR for that inspection cited the City for compaction and cover violations under 9 VAC 20-80-250.C.2, allowing waste to enter surface waters in violation of 9 VAC 20-80-250.C.10, allowing pollutant discharge to waters of the United States in violation of 9 VAC 20-80-250.C.12.a&b), and failure to provide proper housekeeping in accordance with 9 VAC 20-80-250.C.13. The CIR listed the failure of the City to properly update its disclosure statement as required by Va. Code § 10.1-1408.1 as an area of concern.

March 2004 Inspections

12. DEQ staff inspected the landfill on March 18, 2004 and performed follow-up site visits on March 19 and 23, 2004. Inspection results documented the failure by the City to place daily cover at the facility. Inspection results also documented the presence of disease vectors, waste entering surface waters, blowing litter. The follow-up visits on March 19 and 23 documented the absence of daily cover at the facility on those dates. On April 22, 2004, DEQ issued a NOV for the following alleged violations of the Permit and/or Regulations that were observed during the March 2004 inspections: a) failure to place daily cover in violation of the compaction and cover requirements at 9 VAC 20-80-250.C.2; b) failure to control disease vectors in accordance with 9 VAC 20-80-250.C.4; c) failure to provide adequate equipment an adequate operator training as required by 9 VAC 20-80-250.C.6; d) waste entering surface waters in violation of 9 VAC 20-80-250.C.10 and 9 VAC 20-80-250.C.12; e) housekeeping violations under 9 VAC 20-80-250.C.13; and f) failure to comply with reporting requirements at 9 VAC 20-80-570.C.
13. A memorandum from the City's Assistant Public Works Director to landfill staff dated March 25, 2004 emphasized the importance of compliance with the daily cover requirement. The memo stated that if extreme circumstances make placement of daily cover impossible, City management must be informed immediately. The memo warned that "the consequences for failing to cover the working face or notify us of an extreme circumstance may be considered cause for immediate dismissal." In a letter to DEQ dated March 31, 2004, the City stated that daily cover was not placed on the dates referenced above because of an equipment shortage at the landfill. That letter also stated that some landfill employees "did not fully understand and/or adhere" to the regulatory requirements regarding daily cover. In a letter to DEQ dated May 6, 2004, the City explained that it has purchased an additional

articulated dump truck to ensure that a working truck is available for placing cover. That letter also stated that the City has approved funding for additional overtime by landfill employees and has decided to add another full-time employee to the landfill staff.

Financial Assurance

14. Inadequate financial assurance has been an issue at the facility for more than a year. Financial assurance was listed as an Area of Concern in the inspection report attached to the February 18, 2003 NOV. Comments in the inspection report stated that

Financial Assurance documentation was submitted on January 2, 2003. This information is under review. According to the Department's records, the facility was requested by letters dated February 14, 2002 and June 20, 2002, to submit a revised financial test adjusting the landfill closure costs for inflation. No response was received to this request. The deadline for filing the revised financial test was March 21, 2002. On September 26, 2002 a letter was sent to Mr. Jeff Joyce advising that the facility submit a demonstration for \$1 million in accordance with 9 VAC 20-70-113, for the exceedence of GPS. This \$1 million is an interim measure that will stay in effect until the facility selects a remedy and provided financial assurance for that remedy. No response to this letter has been received. Please submit the requested information to Laura Shumaker, DEQ-Office of Financial Assurance, within 10 days of receiving this report.

15. In a letter dated July 8, 2002, Joyce Engineering, Inc. notified DEQ on behalf of the City that data from the May 2002 groundwater sampling events indicate that the Facility had exceeded Groundwater Protection Standards ("GPS").

16. In a letter dated September 26, 2002, the DEQ Waste Financial Assurance Program Manager notified the City that

Your facility, Martinsville Sanitary Landfill, Permit #049, has been identified as a facility that statistically exceeded GPS on July 8, 2002 and, therefore, is required to demonstrate additional financial assurance in the amount of \$1 million using the mechanisms listed in Article 4 of the Regulations [by] November 8, 2002. The \$1 million is an interim measure that will stay in effect until the facility has chosen a remedy and provided financial assurance for that remedy.

17. A March 3, 2003 e-mail from the DEQ Waste Financial Assurance Program Manager to the City requested that Martinsville submit a corrected financial test by April 3, 2003. That letter also stated in part that

I have been reviewing the [financial assurance] submittal for calendar year 2002. These documents were received by the Office of Financial Assurance on January 3, 2003. They have not been prepared in accordance with 9 VAC 20-70-10 *et seq.* Based on the cost estimate prepared in 2001, the City should have demonstrated closure costs of \$1,569,313 and post-closure costs of \$1,564,519. Martinsville is also required to demonstrate corrective action costs of \$1,000,000 for a total of \$4,103,155. Please submit the corrected financial test using these amounts on or before April 3, 2003. As I stated above, I will forward the cost estimate [dated 9/28/01] to the regional office for review. Please note that this may result in a modification of the estimates. If the estimates increase as a result of the review process, the City will be required to update its financial assurance to reflect the new amount. The City will be contacted when the review is complete.

I have also been reviewing the Martinsville submittal for 2001. In a letter dated February 14, 2002 the Department requested that the City resubmit the financial test because it did not adjust the closure costs for inflation. The deadline for resubmittal of the financial test was March 21, 2002. On June 20, 2002, the Department again notified the City that it had not met the March 21, 2002 deadline and had 10 more days to resubmit. The City did not resubmit the financial test. On or about July 8, 2002 the landfill statistically exceeded GPS (groundwater protection standards) and was then required to demonstrate an additional \$1,000,000 for interim corrective action. The Department sent a letter on September 26, 2002 notifying Jeff Joyce of this requirement. The deadline was November 8, 2002. There was no response from the City regarding the additional \$1,000,000 financial assurance. The City did not comply with the financial assurance requirements for 2002. Any notice of compliance for 2002 was made in error.¹ Please let me know if you have any questions.

18. DEQ cited a violation of the financial responsibility requirements ([9 VAC] 20-70-10 *et seq.*) in the CIR for the April 15, 2003 inspection of the Facility. The CIR explained that

A submittal for 2002 was received by the Office of Financial Assurance on January 3, 2003. According to the Office of Financial Assurance, the submitted documents have not been prepared in

¹ [In a letter dated October 21, 2002, WCRO staff incorrectly stated that "the facility's financial assurance is approved through December 30, 2002."]

accordance with 9 VAC 20-70-10 *et seq.* Based on the cost estimate prepared in 2001, the City should have demonstrated closure costs of \$1,569,313 and post-closure costs of \$1,564,519. Martinsville is also required to demonstrate corrective action costs of \$1,000,000 for a total of \$4,103,155. The facility was asked to submit the corrected financial test using these amounts on or before April 3, 2003.

19. The City submitted a corrected financial test to DEQ on July 23, 2003. DEQ approved the corrected financial test in a letter dated September 10, 2003.

Meetings

20. DEQ staff met with City representatives on March 14, 2003 to discuss the February 18, 2003 NOV. City representatives asserted that many of the apparent violations cited in the NOV either had been corrected or would be within the next few weeks. City representatives stated that most of the problems at the landfill were caused by unusually severe weather. In a letter dated March 21, 2003, the City summarized its position as presented at the March 14 meeting.
21. DEQ staff met with City representatives on March 24, 2004. During that meeting the results of the March 2004 inspections referenced in Paragraph 13 above were discussed.

FEMA

22. During the spring and summer of 2003, the City was working with FEMA in an effort to obtain disaster relief funds for weather-related damages that occurred at the Facility. FEMA later approved the City for disaster assistance. The City has begun the repairs in accordance with plans and specifications developed by the City's solid waste consultant, Joyce Engineering, Inc. The City hired Shamrock Environmental to make the repairs.

CAP

23. In a letter dated February 20, 2003, DEQ staff indicated that the City should submit a Corrective Action Plan ("CAP") for the landfill by August 1, 2003 in accordance with the requirements of 9 VAC 20-80-310.B. In a letter dated July 22, 2003, Joyce Engineering requested on behalf of the City, that DEQ extend the due date for the CAP until December 1, 2003 so that the data necessary for CAP development could be gathered. In a letter dated August 6, 2003, DEQ staff indicated that "The City's proposed CAP submittal deadline of December 1st, 2003 will be included in the Consent Order now being negotiated with the City."

Surface Water Concerns

24. An unnamed tributary of Jones Creek passes through a culvert that runs under part of the

landfill. DEQ staff performed biomonitoring surveys at sites upstream and downstream of the landfill in that tributary on January 21, 2003. Results of the survey indicate that the downstream site is moderately impaired. The most significant difference between the surveyed sites was the presence at the downstream location of large quantities of *Sphaerotilus* bacteria. In a report dated February 28, 2003, the DEQ Regional Biologist concluded that "such a large presence of this bacteria indicates a definite pollution impact."

25. When the biomonitoring survey was done, DEQ staff also took water samples at the upstream and downstream monitoring sites. The samples were analyzed for volatile organic compounds. Ethel benzene and xylenes were detected in the downstream sample. These constituents were not detected in split samples taken by Joyce Engineering, Inc.
26. A surface water monitoring program for the Facility is described at §§ 7.0 through 7.5 of the Permit module titled *Water Quality Monitoring Plan* (December 2001 Revision) ("WQMP"). At § 7.0, the WQMP states that "The intent of the surface water monitoring program is to determine if surface water is being adversely impacted by the landfill." At § 7.1, the WQMP requires that downstream samples be taken "at the outflow of the 72-inch pipe" that conveys surface water and stormwater flow beneath the landfill. At § 7.5, the WQMP requires that "If any downstream concentrations [in the unnamed tributary of Jones Creek] are greater than both backgrounds and surface water quality standards, the City of Martinsville will manage the surface water as leachate, and develop a leachate management plan for submittal to DEQ within 30 days of determining that surface water is contaminated."
27. The downstream sampling point used by the City in the surface water monitoring program mandated by the WQMP has been a significant distance downstream from the 72-inch pipe. Because the City has not sampled directly from the 72-inch pipe in accordance with § 7.1 of the WQMP, data obtained so far by the City is not adequate to make a determination as to whether leachate is present in the discharge from that pipe.

Compliance History

28. Inadequate cover was listed as a violation in a Warning Letter dated February 21, 2002 and as an Area of Concern from inspections dated January 26, 2001, August 29, 2001, July 16, 2002, and January 16, 2002. Excessive blowing litter was listed as an Area of Concern in inspections dated April 26, 2001, May 30, 2001, and February 14, 2002. On January 25, 2001, DEQ issued a Consent Order with a \$1,470 civil charge to the City for violations of cover and run-on/run-off requirements. The ten-year review mandated by Code § 10.1-1408.1.E for the landfill for the period 1991 through 2000 listed compaction and cover violations every year, with a total of 29 such violations cited.

Summary of Alleged Violations

29. Based on inspections or follow-up site visits performed on March 18, 19, and 23, 2004, the

Director alleges that the City violated 9 VAC 20-80-250.C.2.b by failing to provide daily cover at the landfill, violated 9 VAC 20-80-250.C.6 by failing to provide adequate equipment and/or personnel training to ensure that daily cover is placed at the landfill, and violated 9 VAC 20-80-570.C by failing to timely report to DEQ conditions that prevented placement of daily cover.

30. Based on inspections performed on December 31, 2002, January 21, 2003, April 15, 2003, and December 3, 2003, the Director alleges that the City violated 9 VAC 20-80-250.C.2.d and 9 VAC 20-80-250.C.11 by failing to provide and/or maintain adequate run-on and run-off control and intermediate cover at the landfill.
31. Based on inspections performed on March 18, 2004, January 21, 2003, and December 3, 2003, the Director alleges that the City violated 9 VAC 20-80-250.C.10 and VAC 20-80-250.C.13 by allowing blowing litter to enter the stream at the Facility.
32. The Director alleges that the City violated relevant provisions of 9 VAC 20-70-10 *et seq.* by failing to maintain adequate financial assurance for the Facility. Specific violations include: 1) failure to provide an additional \$1 million in interim financial assurance within 120 days after the Facility statistically exceeded GPS in July 2002 as required by 9 VAC 20-70-113.A, and 2) failure to update financial assurance for inflation-adjusted closure costs for the year 2002 as required by 9 VAC 20-70-81.A and 9 VAC 20-70-111.B.

Section D: Agreement and Order

By virtue of the authority granted it in Va. Code §10.1-1455, the Board orders the City, and the City voluntarily agrees, to pay a civil charge of Twenty-Five Thousand Dollars (\$25,000.00) within thirty (30) days of the effective date of this Order in settlement of the violations alleged in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

Either on a transmittal letter or as a notation on the check, the City shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

Section E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the City, for good cause shown by the City, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those alleged violations pertaining to the facility specifically

identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts. This Order shall not limit the authority of the Board or the Director to seek remediation and/or civil penalties or civil charges pertaining to any other violations that may have occurred at the landfill.

3. Solely for the purposes of the execution of this Order, for compliance with this Order, and for subsequent actions with respect to this Order, the City admits the jurisdictional allegations, factual findings, and conclusions of law contained herein. The City specifically denies any and all criminal or civil liability with regard to the jurisdictional allegations, factual findings and conclusions of law contained herein with respect to any matter arising outside of the scope of this Order. Both the Board and the City agree that the City has engaged in the preparation and execution of this Order in an effort to compromise and settle any and all disputes with the Board without recourse to litigation.
4. For purposes of this Order only, the City declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code §§ 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
5. Failure by the City to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, or other act of God, war, strike, or other such occurrences. The City must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. The City shall notify the Director and the Director of the Department's West Central Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any

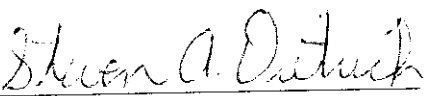
requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Department's West Central Regional Office within 72 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director of the Department of Environmental Quality or his designee and the City. Notwithstanding the foregoing, the City agrees to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall continue in effect until: a) The City petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or b) The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the City. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By the signature of an authorized official below, the City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of MARCH, 2005.

For 
Robert G. Burnley, Director
Department of Environmental Quality

Seen and Agreed to: _____

The foregoing instrument was acknowledged before me on February 1, 2005

by Robert R. Collins City Manager, on behalf of the City of Martinsville,
(name) (title)

in the ~~County~~/City of Martinsville, Commonwealth of Virginia.

Susan M. Johnson
Notary Public

My Commission expires: 6/30/06